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**Crises of the Republic:  
Transformations of State Sovereignty and the  
Prospects of Democratic Citizenship<sup>1</sup>**

The title of this essay, “Crises of the Republic,” refers to a collection of Hannah Arendt’s essays composed during the late 1960s and early 70s in the USA, which saw the shootings of John F. Kennedy, Robert Kennedy, and Martin Luther King; the escalation of the Vietnam War, the publication of the Pentagon papers, the Watergate break-in, increasing violent confrontations in inner city neighborhoods, the infiltration of the Black Panther Movement by the CIA, and clashes among various wings of the Black Liberation Movement. It seemed as if there were invisible forces pulling the social fabric of American society apart.<sup>2</sup> Lying in politics became the norm and political rivalry descended to the level of criminality. It was this anguish which led Hannah Arendt to speak of “the crises of the republic” and to ask whether democratic citizenship was still possible.

W.E.B. Du Bois (1868–1963) was responding to a related set of conflicts which were tearing American society apart when he asked: “Can I be both [an American and a Negro]? [...] Or is it my duty to cease to be a Negro as soon as possible and to become an American?”<sup>3</sup> Finding no way to reconcile this contradiction within the context of the institutions of his time, Du Bois became a Pan-Africanist and chose to leave the USA for Ghana, never to return. Both he and Arendt were profoundly cognizant of the condition of the “self-conscious pariah,” of the outsider, who chose to remain an outsider, instead of becoming a parvenu and accepting social conformism.

Whereas the social and political thought of mid-twentieth century was preoccupied with the capacity of society to accommodate

equality for all while recognizing racial difference, understood prominently in terms of the “Black-White” divide, today we face another set of crises, no less challenging than days past but more global in character. If I may phrase this somewhat pointedly, I would say that whereas formerly it was *society* that was torn apart – and not only in the USA – through class conflict, war, race riots, ethnic tensions and gender struggles, today’s crises are generated by the diminishing capacity of *nation-states* to navigate an increasingly complex, fluid, and obscure security as well as economic environment. Since the end of the Cold War it is the world state-system and the Westphalian model of sovereignty that are in crises. Today the global poor and the global rich face off in an environment where the state, which was once viewed as an instrument of oppression of the poor and racial minorities, is disappearing, leaving in its wake (as after Hurricane Katrina) collapsing public institutions and frayed solidarity. The poor, the colored, the ex-, post- and neo-colonials are the victims of the receding power of the state.

We are in the midst of a *transfiguration* of citizenship and sovereignty: whether these forces add up to a *refiguration* of these institutions or to their demise beyond recognition, at which point the project of democracy itself becomes meaningless, is hard to tell.

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It is appropriate to begin my considerations on transfigurations of citizenship and sovereignty, with some reflections on the most significant political event of this brief twenty-first century. The events of September 11, 2001, in retrospect, reveal themselves as one of those marking moments when we become aware of the sway of *Kairos* (fate, destiny) over our lives. This is painfully true for those individuals who were caught that day in the mayhem of fire, steel, synthetic material, cement and debris, some of whom sought to escape this techno-industrial inferno by jumping to their death. For days afterward, downtown Manhattan emitted a putric smell of organic and inorganic material, which

conveyed, even to those of us who had been far away from the site, a sense of the frightening powers of a material civilization whose instruments of civil aviation could be turned into weapons of destruction.

September 11, 2001 in New York has been followed by the Madrid bombings in March 2004, and by the London subway bombings in July 2005. These events and the wars upon Afghanistan and Iraq have rattled the world society of states to its core: contradictions, fissures and crises in what is commonly referred to as the “Westphalian” model of state sovereignty have erupted unto world stage. What is novel about our political situation?

First, *non-state agents* who are capable of inflicting large scale violence on states with ever new means of mass destruction have emerged unto the world stage. The use of civilian airplanes as weapons or suicide bombings in crowded trains and subways inflict shock upon the population, but they pale in comparison with the potential deployment of biological, chemical and nuclear agents by similar groups.

Second, the new means of electronic communication, the ease of global air travel, the emergence of transnational networks of finance and weapons procurement, along with the unprotected borders of weak states, are producing *transnational modalities of violence*. Potentially the whole globe has become the site of the new conflict between Islamic jihadist groups and their enemies. There is a globalization of the sites of confrontation which carries little connection to the logic of interstate political conflict.

Third, compared to terrorist movements of the late 1960s and 70s the global jihadist groups are short in words and ideology and quick to act; there is frequently only a slim connection between the acts which they undertake and self-interested political results they may wish to produce. More often than not, they aim to remind the world of their continuing presence. They perpetrate a *symbolic politics of fear in the enemy and martyrdom for the fighters themselves*.

Fourth, the presence of this diffuse global enemy, whose networks range from “sleeper” cells in Hamburg to Lakawhana, NY, from Islamabad to Madrid and to Bali, erases the lines between the enemy within and without, the foreigner at home and the alien other. *Police action, security operations, and military planning flow into each other.* The creation of Homeland Security Administration in the USA, which has now absorbed the Immigration and Naturalization Service, is one of the clearest signals of the criminalization of immigration; the foreigner, in virtue of being the outsider, is potentially viewed as an enemy alien. This assumption not only contradicts the principles of an open society based on immigration, it also gives those within the borders a false sense of security by pretending that there can be no political enemies at home who side with the goals of extremist Islamist movements.

These four features of the post-9/11 world – the emergence of non-state actors as agents of mass violence; the deterritorialization of violence; the symbolic politics of fear and martyrdom, and the vanishing lines between military, police and security functions – are among the political and security challenges which increasing numbers of states will face in the new century.

While few would deny the novelty of these challenges, there is justifiable skepticism that US foreign policy since September 11, 2001 was undertaken solely as a response to those events. The United Nations is under siege, and there is a departure from the principle of the formal equality of sovereign states toward a remoralization of international relations through demands that formal recognition be made dependent upon substantive regime characteristics and not only upon state behavior in compliance with international law. We are in an extremely multivalent as well as slippery moment in world-politics when the changing security situation after September 11, together with growing trends toward the disaggregation of sovereignty in the international realm, come together to *destabilize* the principle of the formal equality of states on which the United Nations rests. On the one hand, the shield of state sovereignty has been pierced by the development

of an international regime of human rights; on the other hand, while formal state sovereignty is everywhere challenged and even threatened by the use of categories such as “rogue state” and “terrorist harboring regime,” it is being aggressively asserted by the world’s sole super-power as its prerogative. The reassertion of sovereignty through the Bush Administration is not an honest effort to reinstate this as a general norm; rather, it is an insistence upon American exceptionalism in the face of international law to determine and interpret unilaterally the nature of international obligations. It is this post-Westphalian juncture that we must seek to understand.

There is general and contentious disagreement among contemporary theorists as to how to assess this new constellation of events and forces. While some write of global civil war and the generalization of the state of exception (Giorgio Agamben), others depict the emergence of transnational norms (Anne-Marie Slaughter), or of global law without the state (Guenter Teubner), or of cosmopolitan governance (David Held). Implicit in all these diagnoses is a view of the limits and weaknesses of the current state-system and of the nation-state itself. As Jean L. Cohen rightly observes: “The general claim is that the world is witnessing a move to cosmopolitan law. [...] But [...] if one shifts the political perspective, the sovereignty-based model of international law appears to be ceding not to cosmopolitan justice but to a different bid to restructure the world order: the project of empire.”<sup>4</sup>

Cosmopolitan norms or empire? Are they the only alternatives? It is crucial to unravel this ambivalent potential between the alternatives of the emergence of cosmopolitan norms intended to protect the individual in a world society on the one hand and the dangers as well as benefits of the transfiguration of state sovereignty on the other. The fact that the internationalization of human rights norms and the weakening of state sovereignty are developing in tandem with each other does not mean that the one can be reduced to the other; nor should objections to the weakening of state sovereignty lead one to reject the spread of human rights norms

for fear that they can be used to justify humanitarian interventions.

In the following, I distinguish the vertical disaggregation of sovereignty from its horizontal disaggregation and both from de-territorialization of law and show how the cosmopolitan project is interwoven with some of these trends. Since these transformations are altering norms of state sovereignty as well as impacting the actual capacity of states to exercise sovereignty, I focus on the interrelationship between state sovereignty and popular sovereignty. The concept of “sovereignty” ambiguously refers to two moments in the foundation of the modern state, and the history of modern political thought in the West since Thomas Hobbes can plausibly be told as a negotiation of these poles: first, sovereignty means the capacity of a public body, in this case the modern nation-state, to act as the *final* and *indivisible* seat of authority with the jurisdiction to wield not only “monopoly over the means of violence,” to recall Max Weber’s famous phrase, but also to distribute justice and manage the economy. In the course of the last three centuries the sovereign *Rechtsstaat* has become the *Sozialstaat*.

Sovereignty also means, particularly since the French Revolution, *popular sovereignty*, that is, the idea of the people as subjects and objects of the law, or as makers as well as obeyers of the law. Popular sovereignty involves representative institutions, the separation of powers, and the guarantee not only of liberty and equality, but of the “equal value of the liberty of each.” Etienne Balibar has expressed the interdependence between state sovereignty and popular sovereignty thus: “state sovereignty has simultaneously ‘protected’ itself from and ‘founded’ itself upon popular sovereignty to the extent that the political state has been transformed into a ‘social-state’ [...] passing through the progressive institution of a ‘representation of social forces’ by the mechanism of universal suffrage and the institutions of social citizenship [...]”<sup>5</sup>

The question is: how does the new configuration of state sovereignty influence popular sovereignty? Which political options

are becoming possible? Which are blocked? I want to say right at the outset, again with Balibar, that “today’s crises affect both states that have never been able to constitute themselves as nation-states in the strong sense, others that cannot remain nation-states by themselves, and finally others still who think they may have found a way of overturning, to their advantage, the old *nomos* of the earth.”<sup>6</sup> Cosmopolitan norms enhance the project of popular sovereignty while prying open the black box of state sovereignty. What is undermining state sovereignty is not the abuse of cosmopolitan and humanitarian norms of justice, though they certainly have served as ideological shields to justify interventions in Iraq and Afghanistan; rather, it is first and foremost the demands of global capitalism that have led to transformations in state sovereignty and to the deterioration of the capacity of states to protect and provide for their citizens.

### **Disaggregating Sovereignty: Vertical Uncoupling**

The modern state formation in the West begins with the “territorialization” of space. The enclosure of a particular portion of the earth and its demarcation from others through the creation of protected boundaries, and the presumption that all that lies within these boundaries, whether animate or inanimate, belongs under the dominion of the sovereign is central to the territorially-bounded system of states in western modernity. The territorial state guards its borders against intruders abroad and toward subversives at home through the maintaining of an army and police force; taxes are levied and fees collected to sustain the state and its coercive apparatus; the modern state also creates citizens through disciplining the population via education, military service, administration, and economic productivity.

Above all, the new territorial state must consolidate its authority against competing feudal, local, tribal and religious forms of law and jurisdiction. Territorial integrity and a unified jurisdictional authority are two sides of the same coin; the proof of the capacity

to protect territorial integrity is the obverse side of the power of the state to assert its jurisdictional authority (*dominium*).

The modern absolutist states of western Europe, governed, in Carl Schmitt's terms, by the "*jus publicum Europaeum*" as their international law, are the paradigm cases to which the term "Westphalian sovereignty" applies. I will define Westphalian sovereignty as the view that the sovereign has absolute authority over all animate and inanimate objects within the territorially recognized and circumscribed boundaries. However, this model was unstable from its inception or in Stephen Krasner's famous phrase "sovereignty is hypocrisy."<sup>7</sup> Already the discovery of the Americas, the imperialist ventures into India and China, the struggle for domination over the Indian Ocean and the 19<sup>th</sup> century colonization of Africa destroyed this form of state sovereignty and international law by chipping at the peripheries.<sup>8</sup> Not only the West's confrontation with other continents, but already the question as to whether the non-Christian Ottoman Empire belonged to the "*jus publicum Europaeum*" showed the limitations of this order. Though Schmitt himself is not far from idealizing this historical moment between the 16<sup>th</sup> and 19<sup>th</sup> centuries in the evolution of "the law of the earth," his own account documents its inherent limits and eventual dissolution.<sup>9</sup> The "deterritorialization" of the modern state goes hand in hand with its transformation from early bourgeois republics into European empires, whether they be those of England, France, Spain, Portugal, Belgium, the Netherlands or Italy.

This transformation of bourgeois republics into empires destroys the overlap of territorial control with jurisdictional authority, which governs, at least in principle, the motherland. Europe's colonies become the sites of usurpation and conquest in which *extra-juridical spaces*, removed from the purview of liberal principles, are created. As Edmund Burke was to express it pithily with respect to "administrative massacres" in India, and the impeachment of Warren Hastings who was responsible for them by the British House, this needed to be done so that "breakers of



the law in India might [not] become ‘the makers of law for England.’”<sup>10</sup>

The rise of bourgeois and democratic republics from within the boundaries of the early absolutist states transforms the “subject” of the state into a “citizen.” As the Westphalian paradigm of sovereignty meets its limits outside Europe, it is also constitutionalized at home, by social struggles for increased accountability, universal suffrage, expanded representation, democratic freedoms and social rights. These struggles are the sites of popular sovereignty, of demands to make the state apparatus responsive to and transparent to its citizens. Struggles for citizenship and popular sovereignty at home, and imperialist ventures abroad go hand in hand.<sup>11</sup> Who was/is the citizen of this new territorially bound state?<sup>12</sup> How was s/he demarcated from the colonial subject?

The challenges we face today arise through yet another uncoupling between territoriality, sovereignty and citizenship, this time through the intensification of world-wide migrations in the era of globalization. Whereas in the 19<sup>th</sup> and 20<sup>th</sup> centuries, European imperialism heralded the uncoupling of jurisdiction from territorial control under popular sovereignty, in that in the colonies the principle of consent was undermined, contemporary migratory movements give rise to overlapping jurisdictions.

While in 1910 roughly 33 million migrants lived in countries other than their own, by the year 2000 their number had reached 175 million.<sup>13</sup> During this same period (1910–2000), the population of the world grew from 1.6 to 5.3 billion, roughly threefold. Migrations, by contrast, increased almost sixfold over the course of the same ninety years. Strikingly, more than half of this occurred in the last three decades of the 20<sup>th</sup> century, between 1965 and 2000. In this period 75 million people undertook cross-border movements to settle in countries other than those of their origin.<sup>14</sup>

Transformations in patterns of migration are leading more and more individuals to retain continuing ties with their home countries and not to become fully integrated in their countries of im-

migration. The ease provided by globalized networks of transportation, communication, electronic media, banking and financial services is producing guest workers, seasonal workers, dual nationals, and diasporic commuters. Migrations no longer bring with them total immersion and socialization in the culture of the host country – a process poignantly symbolized by the assignment to new immigrants to the USA of new family names in Ellis Island for example. Increasingly, migrations are a resource that states are jealously competing with one another to manipulate. These efforts are yielding the increasing uncoupling of territoriality and jurisdiction, hence contributing to the disaggregation of sovereignty.

Nation-states are encouraging diasporic politics among their migrants and ex-citizens, seeing in the diaspora not only a source of political support for projects at home, but also a resource of networks, skills and competencies that can be used to enhance a state's own standing in an increasingly global world. Nationals outside one's boundaries become politico-economic and cultural emissaries of the sender country, frequently exercising pressure on behalf of their countries of origin to affect policies in host countries, not to mention serving as a considerable source of revenue and foreign reserves. Notable examples of such diasporas are the large Indian, Chinese and Jewish communities across the globe. Their continuing allegiance to the so-called "home country" is carefully cultivated.<sup>15</sup>

Migrations thus lead to a pluralization of allegiances and commitments and to the growing complexity of nationals who, more often than not, in today's world, are also ex-, post- and neo-colonials. We are witnessing the increasing migration from periphery to center, encouraged by wide differentials in standards of living between regions of the world, and facilitated by the large presence of family and kin already at the center of what was once the Empire. Indians, Pakistanis, Kashmiris and Sri Lankans in the UK; Algerians and Moroccans in France; Surinamese and Moluccans in The Netherlands; Latin Americans in Spain; Libyans in Italy are all populations groups whose history is deeply bound up

with European Empires. Migrations reveal the “permeability” of the state’s borders: the Westphalian state which extended towards the rest of the world now finds that its borders are porous in both directions and that it is not only the center which flows to the periphery but the periphery which flows towards the center.

This condition demystifies sovereignty to be an absolute instance. Sovereignty always signified a systemic relation among sovereigns, considered formally free and equal. State sovereignty, which is imminently bound up with the ability to protect borders, depends upon skillful negotiations, transactions, agreements and flows with other states. Of course, states differ in their ability to assert their sovereignty and to throw their weight around. The poorer economies of Central America, South Asia and Africa are more dependent upon the remittances and continuing allegiance of their diasporic populations than are the resource-rich economies of North America and Europe. At the eye of the storm, one’s vision is calm and distorted. But the storm raging around the eye can eventually disturb the calm at the center as well.

Migrations are the site of intense conflicts over resources as well as identities. In the contemporary world, strong states militarize and increasingly criminalize migratory movements. The poor migrant becomes the symbol of the continuing assertion of sovereignty. Migrants’ bodies, both dead and alive, strew the path of states’ power.

Militarization and criminalization are defensive responses to the inevitable disaggregation of sovereignty through migrations. This process, which I name “vertical disaggregation” of sovereignty, suggests another model for thinking about sovereignty besides the autochthonous impermeability of states still praised by Carl Schmitt. Can we still maintain the ideal of popular sovereignty and democratic rule if the state-centered model of sovereignty is itself becoming dysfunctional?

## **Disaggregating Sovereignty: Horizontal Uncoupling**

Transnational migrations reveal the interdependence of states upon the world-wide movement of peoples as well as each other's policies. Since every inch of the face of the world, with the exception of North and South Poles, are now etatized, and governed by a state which has territorial jurisdiction, cross-border movements initiated by migrants as well as refuge and asylum seekers bring to light the fragility as well as the frequent irrationality of the state-system. Vis-à-vis people's cross-border movements, the state remains sovereign, albeit in much reduced fashion. Vis-à-vis the movement of capital and commodities, information and technology across borders, the state today is more hostage than sovereign.<sup>16</sup>

A great deal has been written in recent years about globalization as a world-wide phenomenon and the subsequently diminished capacity of states. I am persuaded by the argument that to understand this phenomenon it is analytically more useful to use the term "stateness," that is the dynamic capacity of states to react to and control their environments in multiple ways.<sup>17</sup> There is tremendous variation across the globe in the capacity of "stateness." The affluent democracies of North America, Europe, Australia, and New Zealand can manipulate, tame and channel the forces of global capitalism to a certain degree, as well as attempting to influence the world-wide flow of information, communication and transportation technologies. This is obviously much less true for many states in North Africa, the Middle East, Latin America, and Asia. The rise to global prominence of China, India and Brazil, as well as the Asian "tiger" economies, is in large measure a consequence of the capacity of these states to channel economic globalization to their own advantage.

In her analysis of these processes with respect to Southeast Asian economies, Aihwa Ong gives a compelling example, namely the creation of "multinational zones of sovereignty" in the form growth triangles (GTs). These "straddle borders between neighboring states such as to maximize the locational advantage and

attract global capital.”<sup>18</sup> The three GT’s formed by linking neighboring countries are Indonesia-Malaysia-Singapore (Sijori), Indonesia-Malaysia-Thailand, and Brunei-Indonesia-Malaysia-Philippines. Transnational corporations such as Nike, Reebok, and the Gap now employ millions of women who work twelve hours a day and make less than \$2.00 a day. Ong observes that these “growth triangles are zones of special sovereignty that are arranged through a multinational network of smart partnerships and that exploit the cheap labor that exists within the orbit of a global hub such as Singapore. It appears that GT workers are less subject to the rules of their home country and more to the rules of companies and to the competitive conditions set by other growth triangles in the region.”<sup>19</sup>

A parallel account is provided by Carolin Emcke of the workings of the *maquilladoras* in Central America. These are established by foreign capital in El Salvador, Guatemala, and Costa Rica under the protection of respective governments often as tax-free zones to attract foreign investment. They protect the zones they occupy through the use of private security guards and forces, crush any attempt to organize the labor force, and fiercely defend themselves against international and even national control and supervision. They resemble the castles of medieval warlords who have taken the native populations hostage.<sup>20</sup>

Whether it is the Growth Triangles of Southeast Asia or the *maquilladoras* of Central America, this form of economic globalization results in the disaggregation of states’ sovereignty with their own complicity. There is an uncoupling once more of *jurisdiction and territory* in that the state transfers its own powers of jurisdiction, whether in full knowledge or by unintended consequence, to non-statal private and corporate bodies. The losers in this process are the citizens from whom state protection is withdrawn, or more likely, who never had strong state protection in the first place, and who become dependent upon the power and mercy of transnational corporations and other forms of venture capitalists.

Despite the great variation across countries with respect to the interactions of the global economy and states, one generalization can be safely made: economic globalization is leading to a fundamental transformation of legal institutions and of the paradigm of the rule of law. Increasingly globalization is engendering a body of law which is self-generating and self-regulating and which does not originate through the legislative or deliberative activity of national legislators.

In his influential article, “‘Global Bukowina’: Legal Pluralism in the World Society,” Gunther Teubner makes this case: “Today’s globalization is not a gradual emergence of a world society under the leadership of interstate politics, but is a highly contradictory and highly fragmented process in which politics has lost its leading role.”<sup>21</sup> As examples of global law without a state Teubner cites “*Lex mercatoria*,” the transnational law of economic transactions; labor law, where enterprises and labor unions, acting as private actors become law-makers; the technical standardization and professional self-regulation engaged worldwide by the relevant parties without the intervention of official politics. Teubner adds human rights, ecology, and sports as other domains in which law and law-like norms emerge without the direct regulatory intervention of states.

This emergent body of law is “a legal order,” even if it has no specific point of origination in the form of a law-producing institution and even less a single and visible law-enforcing agency. The boundaries of global law are not set by national borders; once more territorial boundaries and jurisdictional powers are uncoupled. Global law is transterritorial law, whose limits are set by “‘invisible colleges,’ ‘invisible markets and branches,’ ‘invisible professional communities,’ ‘invisible social networks’ [...]”<sup>22</sup>

Global law is celebrated by Teubner as initiating a new form of legal pluralism and may be even a new form of politics which is to be distinguished from empire, or from the *Pax Americana*. But as Teubner acknowledges this form of law has serious democratic deficits. “It is a law that grows and changes according to the exi-

gencies of global economic transactions and organizations. This makes it extremely vulnerable to interest and power pressures from economic processes.”<sup>23</sup> It is indeterminate and can change in its application from case to case.<sup>24</sup> While this makes it flexible and adaptable, it also makes it subject to outside influences. Soft law is law without the characteristics traditionally associated with the rule of law: transparency, predictability, uniformity of application as well as accountability to a demos. These features of the rule of law are not mere procedural characteristics, since they act as guarantees of the equality of citizens before the law. Global law which lacks these characteristics, therefore, is not equality-guaranteeing and equality-protecting for citizens, rather it is law which enables global corporations and other bodies to carry out their transactions in an increasingly complex environment by generating self-binding and self-regulating norms.

That economic globalization threatens core features of the rule of law and thereby challenges the prospects for liberal democracy as well is emphatically argued by William E. Scheuerman in *Liberal Democracy and the Social Acceleration of Time*:

Contemporary capitalism is different in many ways from its historical predecessors: economies driven by huge transnational corporations that make effective use of high-speed communication, information, and transportation technologies represent a relatively novel development. The relationship of capitalism to the rule of law is thereby transformed as well... As high-speed social action “compresses” distance, the separation between domestic and foreign affairs erodes, and the traditional vision of the executive as best suited to the dictates of rapid-fire foreign policy making undermines basic standards of legality in the domestic sphere as well.<sup>25</sup>

The transformation of the rule of law gives rise to “fast-track legislation,” pushed by national legislators without adequate debate and deliberation; the power of deliberative bodies is eclipsed and that of the executive increases. “The main problem posed by globalization is less that transnational business can only preserve its

autonomy by limiting state power by means of the rule of law than that the democratic nation-state can only hope to maintain its independence in relation to global business by counteracting the virtually universal competitive rush to provide transnational firms with special rights and privileges.”<sup>26</sup> States have to avoid the “race to the bottom,” that is to embrace neo-liberal reforms, cutting back on the welfare-state and relaxing labor and environmental legislations.

Law without a State? Or race to the bottom? I had previously asked: the spread of cosmopolitan norms or imperialism? Again we seem confronted by unpalatable alternatives and disjunctions. Surely, these are not the only options which globalization processes confront us with, but in either case, the model of liberal sovereignty, based upon the unity of jurisdiction administered over a defined territory and assuring citizens’ equality through the administration of the rule of law, more and more appears as if it were the memory of a quaint past. It is important to emphasize though that sovereign states are players with considerable power in this process: they themselves often nurture and guide the very transformations which appear to curtail or limit their own powers.

Whether it be through the changing patterns of transnational migrations, through the emergence of Growth Triangles and new global forms of law without a state in the accelerated and fluid global market place, or through the pressure to adapt state bureaucracies to the new capitalism, an epochal change is under way in which aspects of state sovereignty are being dismantled chip by chip. As new agents of jurisdiction in the form of multinational corporations emerge, state jurisdiction and territoriality are uncoupled. Frequently, the state disburses its own jurisdiction to private agencies in order to escape the territorial control of popular legislators. The social contract is increasingly frayed.

If the analysis presented above is partially accurate, does the “twilight of state sovereignty” mean the end of democratic politics, the displacement of the political or maybe even its eventual



disappearance in the evolution of world societies? What are the normative consequences of these transformations? What light does this social-theoretic analysis shed on the political philosophies of the present period?

## **Twilight of Sovereignty and Democratic Reiterations**

Further differentiations are needed to round off this broad picture. Just as the capacity of nation-states to exercise their stateness varies considerably, so do their reactions to the shrinking sphere of state autonomy and activity. Vis-à-vis the economic, ecological, legal challenges and the growing fluidity of world wide migrations, the states of Europe have chosen *the cooperative restructuring of sovereignty*; the European Union, despite all its problems at the present, is one of the most impressive attempts to deal with the current crisis by reconfiguring sovereignty and by disaggregating it, that is by distributing the marks of sovereignty among various instances – sometimes referred to as First, Second and Third Pillar of EU law. The skeptics ask whether this cooperative restructuring of sovereignty has not lost sight of popular sovereignty. The vast literature on the presence or absence of a European demos reflects this anxiety.

To be juxtaposed to this cooperative restructuring of sovereignty is the *unilateral reassertion of sovereignty*. At the present time not only the United States, but China, Iran and India as well have chosen this route – not to mention Russia, North Korea and Israel. The strategy here is to strengthen the state via attempts to gather all the markers of sovereignty in the body of one public authority, with the consequence of increased militarization, disregard for international law and human rights, regressive and hostile relations with neighbors, criminalization of migration and cross-border movements. Particularly since these unilateral actions of the state are still incapable of influencing the global economic context, in such instances strengthening the state comes at the cost of popular sovereignty, by restricting liberties at home and leading toward the ill-treatment of nationals abroad. Global neo-

liberalism and the unleashing of market forces seem to go hand in hand with the authoritarian reassertions of sovereignty.

The third alternative is the weakening of the already fragile institutions of state sovereignty, as we see in vast regions of Africa, Central and Latin America, and South Asia. In these cases global market forces further destabilize fragile economies: they break up the bond between local elites and the vast army of the poor and the downtrodden and leave them to the mercy of *maquilladoras*, paramilitaries, drug lords, and criminal gangs. The state withdraws into a shell, as has happened in the Ivory Coast, the Congo, the Sudan, El Salvador, some parts of Brazil, and Burma etc. Under such conditions popular sovereignty takes the form, at best, of guerilla warfare and at worst, of equally criminal groups fighting to gain a piece of the pie. Neither the contraction of state-ness nor its militarized reassertion are compatible with popular sovereignty.

This sociologically differentiated picture needs to be juxtaposed to the currently very popular language of “empire” and “the multitude.” Empire, according to Michael Hardt and Antonio Negri, is the ever-expanding power of global capital to bring farther and farther reaches of the world into its grip.<sup>27</sup> Unlike the extractive and exploitative empires of the past however, the new empire encourages the spread of human rights norms; it pushes the new technologies of networking thus destroying the walls of separation and generating a new global connectivity consonant with this new age. Critics who see this as part of a global civil war perpetrated against the poor of the earth are fixated on old paradigms which have an exploitative hegemon at their center. Even the USA cannot be this new hegemon: its military power is supreme but its political power is circumscribed by international institutions.<sup>28</sup>

Since the webs of empire are so ubiquitous, sites of resistance to it are diffuse, decentered and multiple. The “multitude” resists the total penetration of life structures by the empire by organizing demonstrations against the G-7, the World Bank, the Gulf War,

the Iraq War and the violation of international law. The multitude goes out into the streets and connects with resisters all over the globe. In fact, local activism and global activism merge with one another since many local groups also participate in these world-wide demonstrations from Seattle to Genoa. The multitude focuses on power as a global phenomenon and attempts to generate a counter-force to empire.<sup>29</sup> Their actions exemplify a form of agency beyond the binarism of member/non-member. Not only migrants but also refugees who have been admitted into a country either legally or illegally, undocumented migrants – *les sans papiers* – are agents of this new activism.

The metaphors of networking, entanglement, binding, the spread of communicative forms etc. which underlie this social-theoretical analysis are lopsided precisely because they present a world without institutional actors and without structured centers of resistance. Just as in Michel Foucault's theory of power, the subjects of power are interpellated by it, i.e. constituted in part through the network of power rather than preceding it, in Hardt and Negri's analysis as well, states and other world institutions disappear as agents and sites of resistance that have prior constitution. But one can stipulate the existence of very distinct and structured institutions and patterns of resistance to power without presupposing a metaphysical primordality of either the state or of the subject. The reach of empire is neither as ubiquitous nor as omniscient as Hardt and Negri would like us to think. That is why, as was argued at the beginning, September 11 constituted such a shock to the body politic of the USA and revealed the vulnerability of empire's population.

Relatedly, the multitude, Hardt's and Negri's revolutionary subject, is not the citizen. The multitude is not even the carrier of popular sovereignty since it lacks the drive toward the constitutionalization of power, which has been the desiderata of all popular movements since the American and French revolutions. The multitude gives expression to the rage of those who have lost their republics: the multitude smashes institutions and resists power. It does not engage in what Hannah Arendt has called the

“constitutio libertatis.”<sup>30</sup> By contrast, popular sovereignty aims at widening the circle of representation among all members of the demos in an enduring form; popular sovereignty aims at the control of state power via the separation of powers between the judiciary, the legislative and the executive; popular sovereignty means creating structures of accountability and transparency in the public exercise of power. This is a far cry from the politics of the multitude.

This aspect of the legitimate exercise of power is well noted in contemporary debates by theorists of transnational governance such as Anne-Marie Slaughter and David Held. At the roots of empire’s extension, argue advocates of transnational democracy, lies a problem of legitimation. We are in the grips of forces and processes which resemble the galloping horseman without a head. Decisions are made in exclusive board meetings of the IMF, WTO and the World Bank affecting the lives of millions, while nation-states refuse to sign multilateral treaties such as the Kyoto Convention or the Rome Treaty leading to the establishment of the International Criminal Court. Progress on treaties for the reduction of weapons of mass destruction – including biological, chemical, and radiological agents are bogged down in self-interested myopia; when genocide occurs the UN hides behind linguistic niceties in order not to have to commit troops. It is foolish to believe that focusing on the local will help solve any of these problems; the local is not beyond the global but constituted and permeated by it through and through. Theorists of the multitude seem to confuse politics with carnival. What matters is not the numbers that gather in Seattle or Genoa, but whether they can build lasting institutions to resist the extension of empire through countervailing structures of governance. Only transnational institutions can do so at all levels of security, disarmament, economics and law. We need transparent and accountable structures of world governance and coordination. Some of these structures are already in sight through the networking of economic, judicial, military, immigration, health and communication experts. They form horizontally networked sites of information, coordination, and regulation. The future of global citizenship lies in becoming

actively involved in such transnational organizations and working towards global governance. Whether this implies world government or not is at this stage beside the point: what matters is to increase structures of global accountability and governance.<sup>31</sup>

In the version of the global governance thesis advocated by Anne-Marie Slaughter, who focuses less on the normative possibilities for democratic governance beyond borders but more on the horizontal networks linking government officials in judicial, regulatory and administrative organizations across state boundaries, a realm of law “beyond the state” has already been created and the reach of global law is extended without the agency of the state and its institutions.

Whereas followers of the late Niklas Luhmann, such as Gunther Teubner, see structures of global governance resulting *per impossibile* through the self-regulating interlocking of anonymous systems of norm-generation which act as each other’s environment, Anne-Marie Slaughter places her faith in the networking of actual elites in the judiciaries across the world, administrative bureaucracies etc. The hope is that new norms and standards for public behavior will result through such interlockings.

Defenders of transnational governance have a point: the current state of global interdependence requires new modalities of cooperation and regulation. Certain markers of sovereignty in the domain of arms control, ecology, combating disease and epidemics, and fighting the spread of poverty must be global joint ventures which will require the work of all people of good will and good faith in all nations of the world. As David Held in particular has argued powerfully, the goal is not just to form institutions of transnational governance but to render existing ones such as the WTO, IMF and AID more transparent, accountable and responsive to their constituencies needs. This in turn can only happen if popular movements within donor and member countries force the elites who govern these institutions toward democratic accountability. It is naïve to assume, as Teubner and Anne-Marie Slaughter seem to, that the good faith of elites or the miracu-

lous sociological signals of anonymous systems alone will move such structures towards democratization and accountability. They won't. Transnational structures need to be propelled toward a dynamic where they can be controlled by public law.

Here, however, we reach a dilemma: precisely because state-centered politics has become so reduced in effectiveness today, new theoretizations of the political have emerged. Yet my critique of the models of empire and transnational governance seems to presuppose a form of popular sovereignty, a *global demos*, which is nowhere in existence. Where is the popular sovereign who can counter empire or who can be the bearer of new institutions of transnational governance?

Today we are caught not only in the reconfiguration of sovereignty but also in the reconstitutions of citizenship. We are moving away from citizenship as national membership increasingly towards a *citizenship of residency* which strengthens the multiple ties to locality, to the region, and to transnational institutions. In this respect defenders of post-national citizenship are correct. The universalistic extension of civil and social rights, and in some cases, of political participation rights as well, to immigrants and denizens within the context of the European Union in particular, is heralding a new institution of citizenship. This new modality decouples citizenship from national belonging and being rooted in a particular cultural community alone. Not only in Europe, but all around the globe in metropolises such as London, Paris, Berlin, Frankfurt, New York, Mexico City, Madrid, etc. we see the rise of political activism on the part of non-nationals, post-nationals, and ex-colonials. They live in multicultural neighborhoods, they come together around women's rights, secondary language education for their children, environmental concerns, jobs for migrants, representation in school boards and city councils. This new urban activism, which includes citizens as well as non-citizens, shows that political agency is possible beyond the member/non-member divide. The paradoxes of the "right to have rights" (Hannah Arendt) is ameliorated by those who exercise their democratic-republican participation rights with or without

the correct papers. The institutions of the nation-state are not the privileged site of the political.<sup>32</sup>

The local alone is not the site of post-national citizenship. New modalities of citizenship and a nascent public sphere are also emerging through the meetings of the World Social Forum in which activists from all nations, representing women's, ecology, ethnic rights, cultural self-determination, economic democracy groups, NGO's and INGO's gather together, plan strategy and policy. They are, in many cases, the ones who articulate and bring to global awareness problems to which transnational structures of governance have to respond. These citizens' groups and social activists are the transmitters of local and global knowledge and know-how; they are generators of new needs and demands that democracies have to respond to. They are members of the new global civil society. This new global civil society is not only inhabited by multinational and transnationals, whether public and private, but also by citizens, movement activists and constituents of various kinds. This emergent global civil society is quite complementary to republican federalism, which in my opinion constitutes the only viable response to the contemporary disaggregation of sovereignty.

## **Republican Federalism and Democratic Sovereignty**

I will define "republican federalism" as the constitutionally structured reaggregation of the markers of sovereignty, in a set of interlocking institutions each responsible and accountable to the other. There is, as there must be in any structuring of sovereignty, a moment of finality, in the sense of decisional closure, but not a moment of ultimacy, in the sense of being beyond questioning, challenge and accountability. As the legal scholar Judith Resnik notes, the development of international law and of cosmopolitan human rights' treaties are creating new modalities for the exercise of federalism. "[F]ederalism is also a path for the movement of international rights across borders, as it can be seen from the adoption by mayors, local city councils, state legislatures, and state

judges of transnational rights including the United Nations Charter and the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW) and the Kyoto Protocol on global warming. Such actions are often trans-local – with municipalities and states joining together to shape rules that cross borders.”<sup>33</sup>

I call such processes of “law’s migration” (Resnik) across state boundaries and institutional jurisdictions, whether institutionalized or popular, “democratic iterations.” By “democratic iterations” I mean complex processes of public argument, deliberation, and exchange through which universalist rights claims and principles are contested and contextualized, invoked and revoked, posited and positioned throughout legal and political institutions, as well as in the associations of civil society. Democratic iterations can take place in the “strong” public bodies of legislatures, the judiciary and the executive, as well as in the informal and “weak” publics of civil society associations and the media.

In the process of repeating a term or a concept, we never simply produce a replica of the first original usage and its intended meaning: rather every repetition is a form of variation. Every iteration transforms meaning, adds to it, enriches it in ever so subtle ways. In fact, there really is no “originary” source of meaning, or an “original” to which all subsequent forms must conform. It is obvious in the case of language that an act of original meaning giving makes no sense, since, as Wittgenstein famously reminded us, to recognize an act of meaning-giving as such an act, we would already need to possess language itself. A patently circular notion!

Nevertheless, even if the concept of “original meaning” makes no sense when applied to language as such, it may not be so ill-placed in conjunction with documents such as the law and institutional norms. Thus, every act of iteration might refer to an antecedent which is taken to be authoritative. The iteration and interpretation of norms, and of every aspect of the universe of value, however, is never merely an act of repetition. Every act of iteration involves making sense of an authoritative original in



a new and different context. The antecedent thereby is repositioned and resignified via subsequent usages and references. Meaning is enhanced and transformed; conversely, when the creative appropriation of that authoritative original ceases or stops making sense, then the original loses its authority upon us as well. Iteration is the reappropriation of the “origin,” it is at the same time its dissolution as the original and its preservation through its continuous deployment.

“Democratic iterations” are processes of linguistic, legal, cultural, and political repetitions-in-transformation, invocations which are also revocations. Through such iterative acts a democratic people who considers itself bound by certain guiding norms and principles, reappropriates and reinterprets these, thus showing itself to be not only the *subject* but also the *author of the laws*. Whereas natural right doctrines assume that the principles which underline democratic politics are impervious to transformative acts of will, and whereas legal positivism identifies democratic legitimacy with the correctly posited norms of a sovereign legislature, jurisgenerative politics signals a space of interpretation and intervention between transcendent norms and the will of democratic majorities. The rights claims which frame democratic politics, on the one hand, must be viewed as transcending the specific enactments of democratic majorities under specific circumstances; on the other hand, such democratic majorities *re-iterate* these principles and incorporate them into the democratic will-formation process of the people through argument, contestation, revision and rejection. Popular sovereignty no longer refers to the physical presence of a people gathered in a delimited territory, but rather to the interlocking in a global public sphere of the many processes of democratic iteration in which peoples learn from one another.

There will be an inevitable tension between the border- and boundary-transcending discourses of democratic iteration and state sovereignty. In fact, democracy is the process through which the popular sovereign tries to tame state sovereignty by making it responsive, transparent, and accountable to the people. The

spread of cosmopolitan norms which aim to protect the human being as such, regardless of national membership, but rather as a citizen of a global civil society, and popular sovereignty mutually reinforce one another. The lines between the inside and the outside are blurred. Whereas in the case of the decline of state sovereignty it is the receding of the public exercise of state power which is at stake, in the case of the augmentation of popular sovereignty, international and cosmopolitan norms subject agencies of the public exercise of power and in the first place, the state itself, to heightened public and juridical scrutiny, thus aiding the assertion of popular sovereignty.

Cosmopolitan norms lead to border-crossing interlockings and coordinations of democratic iterations among those who are organized in human rights, women's rights, ecology and indigenous rights movements. The "lex mercatoria" and other forms of law without the state generated by global capitalism, by contrast, strengthen private corporations vis-à-vis public bodies. Thus, in the case of North American Free Trade Agreement firms are granted rights hitherto generally limited to nation-states. Chapter II (B) of the Treaty allows private businesses to submit complaints against member-states to a three-member tribunal. One of the members is chosen by the affected state, another by the firm, and the third jointly by the parties. As Scheuerman observes, "NAFTA thereby effectively grants states and corporations equal authority in some crucial decision-making matters." And he adds, "In a revealing contrast the procedures making up NAFTA's labor 'side agreement' deny similar rights to organized labor."<sup>34</sup>

There is an interesting parallel here to the growing power of individuals to bring charges for human rights violations against states that are signatories to the European Convention for the Protection of Human Rights and Fundamental Freedoms in front of the European Court of Human Rights. In this case as well, states are defendants and no longer immune from legal prosecution. In both cases, the "black box" of state sovereignty has been pried open but with very different normative consequences: in the case of NAFTA and other forms of *lex mercatoria* states becomes liable

to prosecution by corporate bodies which do not represent *generalizable interests* but only their particular interests and those of their constituents. Interestingly, at the same time they disempower organized labor and environmental groups from enjoying similar jurisdictional privileges in bringing charges against the state.

In the case of charges brought against states for human rights violations, there is a *generalizable interest* shared by all citizens and residents of a state alike, such as to prevent the use of torture for example and other forms of the widespread violation of human rights. Human rights trials against sovereign states even go beyond the generalizable interest of the citizens involved, to establish universalizable norms of human rights which would protect individuals everywhere and in any part of the world. There is a context-transcending power to these human rights iterations which feed into the normative power of cosmopolitan norms.

One cannot dogmatically preclude that private corporate litigations may involve cases with generalizable potential for world-wide human rights standards. Corporations can behave as ethical persons: a well-known example is the behavior of American corporations, largely under the influence of their share-holders, in South Africa to defy the apartheid regime and to employ South African Blacks. In this instance, corporate behavior which defied the local state set a powerful moral example. But this is an unusual and infrequent example. By and large multinational corporations, as evidenced by the greediness of pharmaceuticals in denying access to cheap AIDS drugs to devastated African nations or by the rapaciousness of drug companies in applying for exclusive patents to the medicinal use of plants and flora in the Amazonas, act to protect the bottom line of their own profits. To the extent to which they become litigants against the state, however, they themselves become legal players against which democratic peoples and human rights groups can bring charges as well. If state sovereignty has been pried open, why not pry open corporate sovereignty as well? Why not extend the power of democratic iterations to multinational and transnational corporations and not only to states?

The boundaries of the political have today gone beyond the republic housed in the nation-state. The deterritorialization of law brings in its wake a displacement of the political. It is clear that only multiple strategies and multiple forms of struggle can reassert the ruptured link between consent and the public exercise of power which is the essence of democratic sovereignty. Transnational structures of governance are fundamental today in order to tame the forces of global capitalism; but the accountability of transnational elites can only be demanded by their own constituencies who mobilize for post- and trans-national citizenship projects. The interlocking networks of local and global activists in turn form an emergent global civil society, in which new needs are articulated for a world public, new forms of knowledge are communicated to a world-public opinion and new forms of solidarity across borders are crafted.

The fact that an aggressive imperialism of our times also avails itself of the language of human rights and cosmopolitan norms to castigate “rogue states” and “terrorist harboring regimes” does not invalidate these norms: quite to the contrary: the population of these countries, who are the victims of their own abusive regimes, of Jihadist movements, as well as of imperialist powers who intervene supposedly to rectify these abuses, deserve our solidarity in acts of cascading democratic iterations. Popular sovereignty cannot be regained today by returning to the era of the “black box” of state sovereignty: the formal equality of sovereign states must mean the universalization of human rights across state boundaries; respect for the rule of law and democratic forms of government. It is my faith, one shared by W.E.B. Du Bois and Hannah Arendt as well, that we can work toward reconfigurations of citizenship and solidarity among peoples by redesigning state institutions.

## Notes

- 1 This essay was first delivered as W.E.B. Du Bois Lecture at the Humboldt University in Berlin, on May 23 2005. Many thanks to Professor Guenter Lenz and to Dr. des. Antje Dallmann of Humboldt University for their hospitality in Berlin.
- 2 Hannah Arendt, *Crises of the Republic* (New York: Harcourt, Brace and Jovanovich, 1972).
- 3 As cited in: Jim Sleeper, *Liberal Racism: How Fixating on Race Subverts the American Dream* (New York: Penguin Books, 1998), 97.
- 4 Jean L. Cohen, "Whose Sovereignty? Empire versus International Law" *Ethics and International Affairs*, 18:3 (2004), 2.
- 5 Etienne Balibar, "Prolegomena to Sovereignty," in: *We, The People of Europe? Reflections on Transnational Citizenship* (Princeton, NJ: Princeton U P, 2004), 152.
- 6 *Ibid*, 153.
- 7 Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, NJ: Princeton U P, 1999).
- 8 For a masterful account, which is also a sustained critique of Schmitt, see Martti Koskeniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*, 98–179. Cf. the statement of the Belgian legal historian Ernest Nys: "A state uses the territories that constitute its private domain as it wishes; it sells them, it rents them out, it attaches such conditions to the concessions it grants as it sees warranted [...] in none of this does it owe an explanation to other States." From: "L'Etat Independent du Congo et les dispositions de l'acte generale," quoted in : Koskeniemi, *ibid.*, 161.
- 9 Schmitt's eulogie to the "jus publicum Europaeum" (the public law of Europe) emphasizes that this system "neutralizes" war by moving away from the medieval notion of "just war." In this transformation the enemy is no longer viewed as "inimicus" but a "justi hostes" (categories which also return in Schmitt's concept of the "political.") This "neutralized" concept of war is also called "the non-discriminatory concept of war" (*der nicht-diskriminierende Kriegsbegriff*). "All inter-state wars upon European soil, which are carried out through the militarily organized armies of states recognized by European law of nations (*Voelkerrecht*), are just in the sense of the European law of nations of this inter-stat-al period." Carl Schmitt, *Der Nomos der Erde im Völkerrecht der Jus Publicum Europaeum* (Cologne: Greven, 1950), 115 (emphasis in the text). Schmitt here conflates "justice" and "legality," not out of some

logical error, but because he rejects all normative standards in judging wars, whether they are derived from the Christian doctrine of just war or liberal concepts of human rights. In his view, such norms would be brought to judge wars “from the outside” as it were. The book’s overall argument is that the resurgence of moralistic liberalism in the international domain, which started with the League of Nations and which was carried to an extreme by President Wilson (although already the Monroe doctrine is a mixture of liberalism and hypocrisy for Schmitt), just like the just war theory of the Christian era, “remoralizes” war and destroys the “non-discriminatory concept of war.” In other words, legal wars can now be considered also unjust wars. This is a viewpoint which disturbs Schmitt: a view undertaken in defense of the interests of the state cannot be an unjust war. His is a totally state-centric account of war as well as of justice, which aims at keeping democratic forces of popular sovereignty at bay, by delegitimizing them and preventing them from questioning the justice of state-based decisions. While Schmitt gives a breath-taking account of the inherent instability of this “*jus publicum Europaeum*,” he is unable to uncover the dynamic causes of western imperialist ventures in twofold fashion. First, Schmitt reduces inter-European wars to “duels” (ibid, 113), thus minimizing the inducements to power-seeking and power-grabbing produced by the *very* balance of power doctrines which sustains the Westphalian system; second, Schmitt also distinguishes all too-neatly between medieval just war theory, natural rights liberalism, and *raison d’état* (reason of state). Yet Richard Tuck shows that both medieval and humanistic jurisprudential sources played a crucial role in the formulation of natural right theories such as those of Hugo Grotius’s. Grotius’s work served *raison d’état* and justified the colonization of the rest of the world via European powers. Hugo Grotius’s cousins were among the directors of the United East India Company, while his father was responsible for nominating one of the seats on the company’s board. John Locke was in the service of the Earl of Shaftesbury, Governor of the Carolinas, and Locke himself was most likely one of the drafters of the Constitution of the Carolinas. In other words, the Westphalian state is much more closely linked to expansionist and universalizing doctrines of natural right liberalism and imperialism than Schmitt admits. Liberalism in international affairs does not make itself manifest only with the expansion of the colonies but is intrinsic to the very foundations of this state-formation. See Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford and New York: Oxford U P, 1999).

- 10 Burke, cited in Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt Brace, 1951), 183. See also Hannah Arendt's powerful treatment, "The only grandeur of imperialism lies in the nation's losing battle against it," *ibid.*, 132.
- 11 See Janine Brodie, "Introduction: Globalization and Citizenship Beyond the National State," and Satoshi Ikeda, "Imperial Subjects, National Citizenship, and Corporate Subjects: Cycles of Political Participation/Exclusion in the Modern World System," both in: *Citizenship Studies* 8:4 (December 2004), 323–33 and 333–49 respectively.
- 12 Citizenship in modernity has meant membership in a bounded political community which was either a nation-state, a multinational-state or a commonwealth structure. The political regime of territorially bounded sovereignty, exercised through formal-rational administrative procedures and dependent upon the democratic will formation of a more or less culturally homogeneous group of people, could only function by defining, circumscribing and controlling citizenship. The citizen is the individual who has membership rights to reside within a territory, who is subject to the state's administrative jurisdiction, and who is also, ideally, a member of the democratic sovereign in the name of whom laws are issued and administration is exercised. Following Max Weber, we may say that this *unity of residency, administrative subjection, democratic participation, and cultural membership* constitutes the "ideal typical" model of citizenship in the modern nation-state of the West. The influence of this model, whether or not it adequately corresponds to local conditions, extends far beyond the West: modernizing nations in Africa, the Middle East, and Asia, which entered the process of state-formation at later points than their West European counterparts, copied this model wherever they came into existence as well.
- 13 Hania Zlotnik, "Past Trends in International Migration and Their Implications for Future Prospects," in: *International Migration into the Twenty-First Century: Essays in Honor of Reginald Appleyard*, ed. M.A.B. Siddique, (Boston, MA: Edward Elgar, 2001), 227.
- 14 United Nations, Department of Economic and Social Affairs, *International Migration Report* ST/ESA/SER.A/220, 2002.
- 15 Aihwa Ong notes: "Given the history of diasporan trading groups such as the Chinese, who play a major role in many of the so-called Asian tiger economies, the Asia Pacific region is ideal for investigating these new modalities of translocal governmentality and the cultural logics of subject making. [...] Global capitalism in Asia is linked to new cultural representations of 'Chineseness' (rather than 'Japaneseness') in relation to transnational Asian capitalism. As overseas Chinese and mainland

- Chinese become linked in circuits of production, trade, and finance, narratives produce concepts such as ‘fraternal network capitalism,’ and ‘Greater China’ [...]. This triumphant Chinese capitalism has induced long-assimilated Thai and Indonesia subjects to reclaim their ‘ethnic-Chinese’ status as they participate in regional business networks.” *Flexible Citizenship: The Cultural Logics of Transnationality* (Durham and London: Duke U P, 1999), 6–7.
- 16 As Turkuler Isiksel, who has assisted me in preparing this paper for final publication has observed, it is almost as if states are reasserting control over the flow of peoples through their territory *in order to* compensate for a manifest loss of competence over other important policy matters: for instance, through the EU, states have relinquished their power of regulating internal markets, determining key aspects of their macroeconomic and monetary policy, etc., *but* the EU’s Council of Ministers is also the venue where the most draconian border-control and anti-immigration measures are taken. Perhaps this is a way of reassuring anxious constituencies that the EU is helping shore up the Leviathan rather than dismantling it.
  - 17 Peter Evans, “The Eclipse of the State? Reflections on Stateness in an Era of Globalization,” *World Politics* 50:1 (1997), 62–87. The original term is from J.P. Nettl, “The State as a Conceptual Variable,” *World Politics* (July 1968), 559.
  - 18 Ong, *Flexible Citizenship*, 221.
  - 19 *Ibid*, 222.
  - 20 Carolin Emcke, *Von den Kriegen. Briefe an Freunde* (Frankfurt: Fischer Verlag, 2004).
  - 21 In: *Global Law Without a State: Studies in Modern Law and Policy*, ed. Gunther Teubner (Aldershot and Brookfield, VT: Dartmouth Publishing Company, 1997), 5.
  - 22 Teubner, *ibid*, 8.
  - 23 *Ibid*, 19.
  - 24 *Ibid*, 21.
  - 25 William E. Scheuerman, *Liberal Democracy and the Social Acceleration of Time* (Baltimore and London: Johns Hopkins U P, 2004), 145.
  - 26 Scheuerman, *ibid*, 169.
  - 27 Michael Hardt and Antonio Negri, *Empire* (Cambridge, MA: Harvard U P, 2001).
  - 28 See Hardt and Negri’s complex analysis of the US and the new bio-political order of empire. “There are many reasons for the United States’ privileged position in the new global constitution of imperial authority. [...] The US Constitution, as Jefferson said, is the one best calibrated



for extensive Empire. We should emphasize once again that this Constitution is *imperial and not imperialist*. [...] The contemporary idea of Empire is born through the global expansion of the internal U.S. constitutional project. [...] The networks of agreements and associations, the channels of mediation and conflict resolution, and the coordination of the various dynamics of states are all institutionalized within Empire. We are experiencing a first phase of the transformation of the global frontier into an open space of imperial sovereignty.” Hardt and Negri, *Empire*, 182. This work was written between the Persian Gulf War of 1991 and the outbreak of Civil War in the former Yugoslavia in 1994. Despite their occasional lapses into activist gauchisme, the book is an important document for radical thought in the twenty-first century, and in my opinion, much more prescient than the subsequent, Michael Hardt and Antonio Negri, *Multitude: War and Democracy in the Age of Empire* (New York: Penguin P, 2004).

- 29 The last chapter of the *Multitude* is called “May the Force be With You.” The force is the ubiquitous power for the good which the hero of Star Wars searches for! It is at least refreshing for the Left to exercise some humor about its own prospects. See 341–348; on carnival, cf. “The various forms of carnival and mimicry that are so common today at globalization protests might be considered another form of weaponry. Simply having millions of people in the streets for a demonstration is a kind of weapon, as is also, in a rather different way, the pressure of illegal migrations. [...] A one-week global biopolitical strike would block any war.” Hardt and Negri, *ibid.*, 347.
- 30 Hannah Arendt, *On Revolution*, intro. Jonathan Schell (New York et al.: Penguin, 2006).
- 31 The most powerful case in recent years for cosmopolitan governance has been made by David Held. See most recently, David Held, *Global Covenant: The Social Democratic Alternative to the Washington Consensus* (London: Polity P, 2004) and Andrew Kuper, *Democracy Beyond Borders: Justice and Representation in Global Institutions* (Oxford: Oxford U P, 2004). See Anne-Marie Slaughter, *A New World Order* (Princeton: Princeton U P, 2004); emergent norms of international law, particularly that of civilian inviolability, are said to create “an international constitutional moment.” See Anne-Marie Slaughter and William Burke-White, “An International Constitutional Moment,” *Harvard International Law Journal* 43:1 (2002). There is something all too cheery and optimistic in these proposals which downplay the danger of dissociating constitutionalism from democracy and from citizens’ will and reason, by transferring it to an expertocracy,

even if as good willing an expertocracy as the judges and practitioners of international law.

- 32 See Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (New York and London: Cambridge U P, 2004) for a further exploration of these themes.
- 33 Judith Resnik, “Law’s Migration: American Exceptionalism, Silent Dialogues, and Federalism’s Multiple Ports of Entry,” *Yale Law Journal* (forthcoming).
- 34 Scheuerman, *Liberal Democracy and the Social Acceleration of Time*, 268–69, fn 52.